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Sarah Willms

Illinois Wesleyan University

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Abstract

This article discusses the Five Knights' Case of 1628 and also the more general ideas that were debated in England at the time about how much power a monarch should be allowed to have.

**The Five Knights' Case and Debates in the Parliament of 1628:
Division and Suspicion Under King Charles I**
Sarah Willms

In 1628, Parliament faced a difficult question regarding sovereignty: had King Charles I overstepped his bounds as King with his actions surrounding the Five Knights' Case? The Members of Parliament (MPs) debated this question in an attempt to come to a conclusion about royal prerogative and how far it should extend. The debate centered on the issue of arbitrary imprisonment and whether or not King Charles could imprison his subjects by royal command with no cause shown. These debates regarding arbitrary imprisonment following the Five Knights' Case shed light on the realities of Parliament under the rule of King Charles—these debates can also help resolve the debate between modern Revisionist and Whig historians. On one side are Revisionist historians, such as Conrad Russell and Kevin Sharpe, who claim there was no clear division within Parliament, especially prior to 1640. However, it is Whig historians, including S.R. Gardiner, and neo-Whig historians, such as Richard Cust and L.J. Reeve, who report the truth in their works by identifying and discussing a division that was present in Parliament under the rule of King Charles I.

Another important discussion that the Five Knights' Case created was the questioning of whether or not the records from the case were manipulated by Charles or one of his advisors, Attorney General Robert Heath. This accusation affected the historiography of the late 1620's in England. While Mark Kishlansky disproved the Whig claim that records were manipulated, the questioning is still significant because of the implications this accusation had for the Parliament of 1628 and the subjects' ideas of their King. The two debates that the Five Knights' Case produced are important to the study of Stuart history because of the division that they represent within Parliament as well as the suspicion that they show towards the King.

I. Background on the Five Knights Case

In 1626, King Charles I created a difficult situation stemming from his extra-parliamentary means of raising money. Charles had dissolved Parliament in order to save his trusted advisor, George Villiers, the Duke of Buckingham, from impeachment by the Parliament of 1626.⁵²⁶ England was also in the middle of a war with France and Spain that was draining the nation's financial and military resources. Therefore, King Charles was in desperate need of money to finance the war as well as the other needs of his court and nation.

Yet, the dissolution of the Parliament of 1626 meant that Charles had to give up any potential subsidies that would have been voted upon. This forced the King to turn to what he called new counsels in an attempt to acquire the money he needed. On one occasion, Charles threatened Parliament when he said, "Now this wee must lett you knowe that if you make this present supplie wee will then goe on with our Parliament, if not then wee must think of a more speedie way."⁵²⁷ By "a more speedie way" the King was suggesting that he was not afraid to use means other than parliament to raise the money that he needed. Thus, faced with a dissolved Parliament and a high demand for money, Charles decided to create the forced loan, also known as The Loan of Five Subsidies.⁵²⁸ On the upside, the forced loan was effective in raising money

⁵²⁶ Michael B. Young, *Charles I* (New York, NY: St. Martin's Press, 1997) 34.

⁵²⁷ Richard Cust, "Charles I, the Privy Council and the Forced Loan," *The Journal of British Studies* 24 no. 2 (Apr. 1985): 220.

⁵²⁸ L.J. Reeve, *Charles I and the Road to Personal Rule* (New York, NY: University of Cambridge Press, 1989) 13.

for the King and his endeavors: it "netted just over £260,000 for the crown between 1626 and 1628."⁵²⁹

Nevertheless, the forced loan did have a downside for those who refused to pay the loan and had to face King Charles's consequences for his "disloyal" subjects. King Charles decided to imprison those who refused to pay the loan; they were "'committed by his majesty's special commandment.'"⁵³⁰ In 1627, five knights, Sir Thomas Darnel, Sir John Corbet, Sir Walter Erle, Sir John Heveningham and Sir Edmund Hampden, were arrested because of their refusal to pay the forced loan.⁵³¹ This eventually led to the Five Knights' Case, in which all but Thomas Darnell came before the King's Bench to obtain *writs of habeas corpus*.⁵³² These writs were later denied because King Charles did not want his disloyal subjects to be bailed; he was trying to make an example of them for other potential dissenters. This landmark case led to debates within the Parliament of 1628 over the idea of arbitrary imprisonment and, more generally, just how far the royal prerogative could extend. The tension that was growing between the King and some of his subjects is further represented by the accusation of Heath in the supposed plot to manipulate the records of the case.

II. Debates over Arbitrary Imprisonment: Division in the Parliament of 1628

Following the Five Knights' Case there was increased debate within the Parliament of 1628 over the idea of arbitrary imprisonment and how far the King's prerogative extended. Most MPs believed the King had a right to his royal prerogative, but there were some who thought that there needed to be a limit to this great power. The question at the center of this debate was whether or not Charles had gone beyond his power by imprisoning the knights without cause. The resulting debates between MPs were centered on "the subjects' grievances by imprisonment of their persons without declaration of the cause," and the question of whether or not the King's right to imprison by royal command was "contrary to and in derogation of the fundamental laws and liberties of the kingdom."⁵³³ This issue represents the larger division which emerged in Parliament because of the two distinct sides, or "camps," that emerged during the debate over arbitrary imprisonment following the Five Knights' Case. The two sides consisted of those who thought the King had the right to imprison without cause and those who thought he had violated the fundamental rights of English citizens in doing so.

One group in favor of King Charles and the royal prerogative was the Privy Council. While there were some who were more moderate in their opinions and thought that there might need to be some limit to the royal prerogative, they did not represent a majority. The larger majority of Privy Council members were firm supporters of King Charles and his prerogative. According to the Privy Council, it was not the fault of Charles that he had to create the forced loan in order to get the money he needed to run the country and support the war effort. Thus, the resulting Five Knights' Case and question of arbitrary imprisonment were not Charles's fault.

According to the neo-Whig historian Richard Cust, the Privy Council came to the conclusion that the forced loan was a result of the following: "1. That the commons and lords

⁵²⁹ *Ibid.*, 14.

⁵³⁰ J.A. Guy, "The Origins of the Petition of Right Reconsidered," *The Historical Journal* 25 No. 2 (Jun 1982): 292.

⁵³¹ *Ibid.*, 291.

⁵³² Mark Kishlansky, "Tyranny Denied: Charles I, Attorney General Heath, and the Five Knights' Case," *The Historical Journal* 42 No. 1 (Mar 1999): 61.

⁵³³ Robert C. Johnson et al., ed., *Proceedings in Parliament, 1628*. (New Haven: Yale University Press, 1983), 2:146. Compare with 2:153.

persuaded and put the King into this war. 2. That warres were never borne by the King's charge without the great assistance of his subjects. 3. That to the maintenance of this war they promised to assist the King with goods and persons."⁵³⁴ Cust also states that the Privy Council believed that because Parliament "had refused to make a grant," Parliament "was now open to the king to request an aid by way of a general loan."⁵³⁵ As Cust demonstrates, the war was the underlying reason that Charles and his councilors used for the need to raise money. When this money was not granted by the Parliament of 1626 because of its speedy dissolution after an attempt to impeach Buckingham, Charles had to turn to other means to raise funds and the only reasonable way he could acquire all the money he needed was through a loan of some sort. Thus, according to Charles and his Privy Council, the forced loan and its consequences could not be laid on the King. Therefore, King Charles was not to blame for the need to imprison the five knights. Rather, some of the blame needed to be placed on the Parliament of 1625 for getting Charles into war as well as for the lack of subsidies granted by the Parliament of 1626, which Charles needed to dissolve in order to save his favorite advisor.

There were other members within the Parliament of 1628 who were not members of the Privy Council and who supported King Charles and his royal prerogative following the Five Knights' Case. One such supporter was Henry Sherfield, a lawyer. On 29 March he discussed "whether the King can detain or imprison a freeman without expressed cause."⁵³⁶ He argued that the problem within the Parliament of 1628 "arises from the objection of questioning the prerogative," and that he "shall argue for the prerogative, and he that crosses that, crosses me [him]."⁵³⁷ Sherfield represents those MPs who supported King Charles in his decisions no matter what and those who were firm defenders of the idea of royal prerogative and did not want to see it limited.

The main reason why Sherfield was so supportive of King Charles in the wake of the Five Knights' Case was because he had no "doubt of the mercy and justice of our [his] pious King."⁵³⁸ The right of the King to imprison by special command "is a freedom to the King as well as to the people."⁵³⁹ Sherfield also stated that it was "therefore against prerogative to govern without this freedom."⁵⁴⁰ Sherfield thought that the King's prerogative was the ultimate power of the realm. Furthermore, he believed that it was unlawful to limit this power of the King. For Sherfield, *rex was lex*: the King was the law and no one could limit him. According to Sherfield and others within the Parliament of 1628 who supported the King, Charles had done no wrong in creating the forced loan and subsequently imprisoning some by special command. For men who agreed with Sherfield, Charles's actions in the Five Knights' Case were not questionable and, therefore, should not be debated. Moreover, these MPs believed that other members of Parliament were over-stepping their bounds in attempting to limit the power of the King. Limiting the royal prerogative would be attacking the very grounds on which England had stood for under the rule of Kings and Queens.

On the other side of the debate were those who supported the rights of English subjects over the powers of the King. One such man, William Saunders, also a lawyer, stated that he

⁵³⁴ Cust, "The Forced Loan," 2:218.

⁵³⁵ *Ibid.*

⁵³⁶ Johnson, *1628 Proceedings*, 2:193.

⁵³⁷ *Ibid.*

⁵³⁸ *Ibid.*, 2:194.

⁵³⁹ *Ibid.*

⁵⁴⁰ *Ibid.*

"had rather bring a weak defense than sit silent," when he argued against Charles' right to arbitrary imprisonment. "The King hath his privileges and so hath the subject," he explained.⁵⁴¹ These men, whom Saunders represents, believed that the English people had natural rights that needed to be protected. Saunders believed that laws were important for protecting these rights and liberties of English subjects, that "[l]iberty is hereditary and law makes the assurance."⁵⁴² There had been other times in English history when the King had over stepped the bounds of his power. It was during the Five Knights' Case and other similar situations that Parliament needed to step in to ensure that the English people were protected and that their rights and liberties were secure.

Another supporter of the liberties of the English people was Richard Cresheld. Like Saunders, he spoke of the laws of England and "the great care which the law hath ever taken of the liberty and safety of the bodies and persons of the subjects of this kingdom."⁵⁴³ These laws had to continue to be upheld in order to assure the continued "liberty and safety" of English subjects, but according to Saunders, these laws had been ignored during the Five Knights' Case. He spoke of "the subjects' grievances by imprisonment of their persons without any declaration of the cause."⁵⁴⁴ Cresheld also believed "that by the very law of nature, service of the subject's person is subject to his sovereign; but this must be in such things which are not against the law of nature."⁵⁴⁵ He also stated that "to have the body imprisoned without any cause declared, so to become bondage, I am sure is contrary to and against the law of nature, and therefore not to be enforced by the sovereign upon the subject."⁵⁴⁶ Clearly, Cresheld, like many other MPs, believed that the King had gone beyond the laws of England by imprisoning the five knights without cause.

Moreover, Cresheld, like so many other MPs within the Parliament, was also attempting to find justice through the laws of the nation. He argued that arbitrary imprisonment by the King of England is unjust: "I hold . . . that the act of power in imprisoning and confining his Majesty's subjects in such manner without any declaration of the cause, is against the fundamental laws and liberties of this realm."⁵⁴⁷ He states that the "kings of England have a 'monarchical' state, not a 'seignoral'; the first makes freedom, the second slavery."⁵⁴⁸ Should King Charles try to exercise too much power over his subjects—power the law did not permit him to have—then England would become a "seignoral state" and the people would have no rights or liberties; they would be living as slaves to their King. According to Cresheld, King Charles was leaning towards this type of rule in his actions surrounding the Five Knights' Case. These actions forced some MPs to become suspicious of their King. These MPs feared the King was exerting too much power which they thought he did not have a right to, and this abuse of power was jeopardizing the natural rights and liberties of his English subjects. According to Cresheld, "justice is the life and the heartblood of the commonwealth:" should this justice be upset, then that nation would bleed and the people within England would be in trouble.⁵⁴⁹

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*

⁵⁴³ *Ibid.*, 2:147. Compare with 2:153.

⁵⁴⁴ *Ibid.*, 2:146. Compare with 2:153

⁵⁴⁵ *Ibid.*, 2:149. Compare with 2:154.

⁵⁴⁶ *Ibid.*

⁵⁴⁷ *Ibid.*, 2:147. Compare with 2:153.

⁵⁴⁸ *Ibid.*, 2:154. Compare with 2:147-8.

⁵⁴⁹ *Ibid.*, 2:146. Compare with 2:153.

It is evident that MPs such as Cresheld and Saunders represent those in England who believed that the King had broken the "fundamental laws and liberties" of England by instating the forced loan and its consequences. Following the Five Knights' Case, it was these MPs who desired that "no free man ought to be committed, detained in prison, or otherwise constrained by command of the King, or Privy Council, or any other, unless some cause of the commitment, restraint, or detainer, be expressed, for which by law he ought to be committed, detained, or restrained."⁵⁵⁰ These men felt a need to "vindicate the fundamental liberties of the kingdom," because "liberty is a stamp of a free man" and King Charles infringed upon this liberty in the Five Knights' Case.⁵⁵¹ To do this, a committee was established "first to prepare matter, secondly to make use of it."⁵⁵² In other words, this committee planned to establish written law that would prevent the "fundamental liberties" of English subjects from being infringed upon again. This "matter" came about later in the Parliament of 1628 when the Petition of Right was created.

Clarification of the Whig/Neo-Whig and Revisionist Debate over the Question of Division in Parliament

From this evidence concerning the debates over the right to arbitrary imprisonment following the Five Knights' Case, it is clear that Whig and neo-Whig historians, not Revisionists, are right to claim that there was division in Parliament. Russell claims that a misinterpretation of the Early Stuart Years is "the belief that the parliaments of these years witnessed a constitutional struggle between two 'sides', government and opposition."⁵⁵³ However, the evidence demonstrates a contrary idea. The difference of opinion between Sherfield and Cresheld proves the inaccuracy of Russell's claim.

Similarly, Sharpe criticizes Wallace Notestein, a Whig historian, because his work, "The Winning of the Initiative by the House of Commons," was a "story of the growth of an opposition group."⁵⁵⁴ He asserts that only Whig historians, writing "after the Civil War, saw the parliaments of the early seventeenth century as platforms of conflict."⁵⁵⁵ Sharpe claims that, because Whig historians look at these debates knowing about the Civil War, they have a tendency to create an imaginary division in Parliament prior to 1640 in order to prove their theory of a "high road" to Civil War.

However, the debates speak for themselves. The debates concerning arbitrary imprisonment following the Five Knights' Case from the Parliament of 1628 show a division between two types of people—people like Sherfield and the King, and people like Saunders and Cresheld, who supported English liberties. The debates from the Parliament of 1628 are more in line with the idea of S.R. Gardiner. He states that the Five Knights' Case and the subsequent debates over arbitrary imprisonment demonstrate that "[t]here was an evident division in the

⁵⁵⁰ Johnson, *1628 Proceedings*, 2:231. Compare with 2:239.

⁵⁵¹ *Ibid.*, 2:99. Compare with 2:106

⁵⁵² *Ibid.*

⁵⁵³ Conrad Russell, *The English Civil War*, ed. Richard Cust and Ann Hughes, "Parliamentary History in Perspective: 1601-1629" (London: Arnold Press, 1997), 34.

⁵⁵⁴ Kevin Sharpe, *Faction and Parliament: Essays on Early Stuart History* (New York, N.Y: Methuen, 1985),

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⁵⁵⁵ *Ibid.*, 16.

House.”⁵⁵⁶ He goes on to assert that the “party which afterwards passed over to the Crown was already forming.”⁵⁵⁷

Furthermore, Russell’s claims, that “attempts to divide parliament into two ‘sides’ have proved grossly misleading” and that “opposition as we know the term now was impossible,” both seem incorrect, or “grossly misleading.”⁵⁵⁸ The truth can be seen in the debates from the House of Commons during the Parliament of 1628. The difference between the comments made by Sherfield and Saunders and Cresheld demonstrate this division. These debates over the right to arbitrary imprisonment demonstrate that the Five Knights’ Case did in fact create division in Parliament.

III. Manipulation of the Records of the Five Knights’ Case: A Matter of Perspective

Another important problem that the Five Knights’ Case created was a debate within the Parliament of 1628 over whether or not the records of the case were manipulated by Attorney General Heath. On 31 March, some MPs within the House of Commons requested “the judgments of the late *habeas corpus* to be brought before them.”⁵⁵⁹ They went on to find in the record “only a *remittitur*.”⁵⁶⁰ But Mr. Solicitor produced a copy of the judgment in the *habeas corpus* which is not entered in the roll, but he said he did think it had been entered.”⁵⁶¹ This caused many MPs to become suspicious of the actions of Attorney General Heath. Thus, because Heath was one of Charles’s advisors, this event led to suspicion of the King as well. J.A. Guy, a neo-Whig historian, was the first proponent of the theory that MPs first became suspicious of Charles due to his relationship with Heath. He states that this “felonious act” was an attempt by Charles and his supporters “to obtain a precedent on record for Charles’s alleged right of discretionary imprisonment for reasons of state.”⁵⁶² Another neo-Whig historian, Michael Young comments on Guy’s theory and its consequences in the eyes of English citizens and MPs: “Heath’s conduct contributed to the growing impression that Charles could not be trusted to rule within the established law of the land.”⁵⁶³

However, Mark Kishlansky, a Revisionist, refuted this idea, and proved that Heath did not manipulate the records for the Five Knights’s Case. In his work, “Tyranny Denied: Charles I, Attorney General Heath, and the Five Knights’ Case,” Kishlansky says that “there is no evidence that Heath ever amended the records of the court of King’s Bench or that he instructed anyone else to amend them.”⁵⁶⁴ Rather, Heath simply “requested a special judgement should be drawn and given to him.”⁵⁶⁵ Furthermore, Kishlansky argues that “[t]here is no evidence to suggest that Charles I demanded that the records of the court be perverted.”⁵⁶⁶ Kishlansky successfully disproves the idea that Attorney General Heath and King Charles manipulated the

⁵⁵⁶ S.R. Gardiner, *History of England from the Accession of James I to the Outbreak of the Civil War, 1603-1642* (New York, NY: Longmans, Green and Co., 1894-96), 265.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ Russell, “In Perspective,” p. 48.

⁵⁵⁹ Johnson, *1628 Proceedings*, 211.

⁵⁶⁰ *Remittitur* is “the act of sending the transcript of a case back from an appellate to a trial court for record or further work” (Oxford English Dictionary)

⁵⁶¹ Johnson, *1628 Proceedings*, 211.

⁵⁶² Guy, “Origins,” p. 297.

⁵⁶³ Young, *Charles I*, 53.

⁵⁶⁴ Kishlansky, “Tyranny Denied,” 58.

⁵⁶⁵ *Ibid.*

⁵⁶⁶ *Ibid.*

records of the King's Bench in the proceedings of the Five Knights's Case. Consequently, he disproves the idea of some historians that "[n]o single event is more indicative of Charles's attempts at tyranny than his effort to alter the records of the court of King's Bench in the famous case of the Five Knights."⁵⁶⁷

Nevertheless, while Kishlansky does have a valid point in showing that the records were not manipulated by Heath or Charles, he is looking at the situation with the wrong perspective. As Revisionist historians urge, it is important to look at the sources with the perspective of someone who was living under the reign of King Charles rather than with the hindsight of knowing about the Civil War. G.R. Elton, a Revisionist, states historians "would do well to turn their eyes from the appearance of revolution at every turn to the realities of the affairs."⁵⁶⁸ He says that "we still have no history of those times which remembers that no one knew of the ultimate outcome" of the English Civil War.⁵⁶⁹ Thus, historians need to start looking at the events prior to the Civil War, including the events surrounding the Five Knights' Case, as someone would have seen them had they been living under the reign of King Charles I, without knowing that in 1642 the nation would be in the midst of a civil war that ended in the beheading of a king.

Therefore, historians must look at this incident concerning the manipulation of court records from the Five Knights' Case as if they were one of the MPs in the House during the Parliament of 1628 or even if they were a common English person finding out about this news from various sources. It was these people who were seeing and hearing information that implicated Heath and King Charles for attempting to change the records of the King's Bench. Many English subjects as well as MPs would have seen this situation as supporting "the fear that Charles's government had abandoned its commitment to the rule of law."⁵⁷⁰ These men were suspicious of King Charles and his advisors because they saw "that the Crown's acts and intentions appeared in an unfavorable light" after the accusation of manipulation came out.⁵⁷¹ This event showed that the King had enormous power that he was willing to use in order to get what he wanted, which he also proved through the forced loan, the imprisonment of the five knights, and later with the Personal Rule from 1629 to 1640, not surprisingly called the 11 years tyranny.

Moreover, Kishlansky states that this accusation against Charles and Heath "was yet another example" of what Charles saw as "the deliberate misrepresentation of his government, another attack upon his inner circle of councilors, more proof of the existence of a conspiracy against him."⁵⁷² The Parliamentary debates make no suggestion at the potential conspiracy; rather, the MPs were simply trying to ascertain the truth about the case. Charles's fear of a potential conspiracy can be attributed to the fact that he was a paranoid ruler, ever fearful of potential plots against him, specifically when it came to potential plots from Parliament. As Cust points out, Charles "had apparently come to regard the Commons' proceedings against Buckingham and their refusal to grant him supply as a symptom of something more sinister, a concerted attempt to undermine the monarchy."⁵⁷³ Cust also states that Charles attributed some

⁵⁶⁷ *Ibid.*, 54.

⁵⁶⁸ G.R. Elton, "The Stuart Century," *Studies in Tudor and Stuart Politics and Government: Papers and Reviews*, Vol. 3 (New York, NY: University of Cambridge Press, 1992), 162.

⁵⁶⁹ *Ibid.*, 188.

⁵⁷⁰ Reeve, *Road to Personal*, 19.

⁵⁷¹ Guy, "Origins," 331.

⁵⁷² Kishlansky, "Tyranny Denied," 83.

⁵⁷³ Cust, "The Forced Loan," 211.

of his controversial actions, such as the need to dissolve the Parliament of 1626, the forced loan, and the Five Knights' Case, to a need to protect himself from "a small, but influential, group of M.P.s" who "had corrupted the house so that instead of expressing its natural love and desire to cooperate it had begun to assault the prerogative."⁵⁷⁴ However, there is no proof of a conspiracy against Charles, rather there was simply a division that was starting to emerge between those who supported the King and his prerogative and those who thought that English liberties were more important.

Moreover, the important thing to note is not whether or not the records were manipulated by King Charles, Attorney General Heath, or anyone else. What does matter is that some MPs were so suspicious of King Charles and his advisors that they felt the need to check the records to see if in fact they had been manipulated. The members of the Parliament of 1628 did not completely trust their king. As Guy states, "[t]he truth was that the revelation of Heath's attempt to pervert the King's Bench records had sown fears that Charles's government had repudiated its commitment to rule of the law."⁵⁷⁵ The MPs knew Charles was willing to use his power to satisfy his own needs and desires over those of English subjects because he had already demonstrated this through the forced loan and imprisonment without cause in the Five Knights' Case. Cust states, in regards to the King's ability to get what he wanted, that "in general he managed to get his way and the overall direction of policy up to the end of 1627 owed more to his wishes than to anything else."⁵⁷⁶ Thus, it was not far-reaching to suspect Charles of manipulating these records because this could have gotten him what he wanted, a legal precedent to imprison by royal command.

In conclusion, it was the Five Knights' Case which helped to increase the division within the Parliament of 1628 as well as the suspicion of King Charles and his trusted advisors. It was this landmark case which led to debates within the Parliament of 1628 about the power of the royal prerogative and just how far it could extend. Furthermore, it made some question the actions of King Charles even more. The Five Knights' Case made many in England distrustful of the King and what he was willing to do in order to get his way. King Charles had already shown that he was willing to dissolve parliament when the MPs were threatening his most trusted advisor, Buckingham, and that he would turn to extra-parliamentary means to raise funds, even if this was against the law. It is no wonder that some English subjects and MPs were suspicious of the actions of their king, even if he was innocent of the accusations. Without this case and the resulting debates within Parliament and the accusation of Heath, it may have taken longer for England to turn to a civil war in hopes of solving the problems between king and subject. Thus, the Five Knights' Case can be seen as an important event in the history of England because its consequences helped to increase the turmoil within the nation; it was this turmoil that grew over time and eventually led to the English Civil War.

⁵⁷⁴ *Ibid.*, 212.

⁵⁷⁵ Guy, "Origins," 312.

⁵⁷⁶ Cust, "The Forced Loan," 213.

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